



Making San Francisco Bay Better

September 4, 2014

Mr. Douglas B. Aikins
Hopkins & Carley, A Law Corporation
303 Twin Dolphin Drive, Suite 600
Redwood City, CA 94065

SUBJECT: Staff Responses to Permittee's Defenses of BCDC Allegations
(Permit File No. 2002.002.03 and Enforcement File No. ER2010.013)

Dear Mr. Aikins:

Thank you for Mark Sanders' memoranda dated September 22, September 26, October 6, October 18, 2011, and your seven correspondences to us dated July 23, August 2, August 22, August 28, September 25, October 14, and October 21, 2013. Although we have responded to Mr. Sanders' concerns in writing and in meetings with Mr. Sanders, his consultants and you, the purpose of this letter is to provide you with a comprehensive response to the 11 above-listed letters and memoranda that pertain to BCDC's allegations of violations of BCDC Permit No. 2002.002.03. We have previously responded to Mr. Sanders' memoranda dated May 23, May 26 and June 2, 2011, by letter dated September 1, 2011.

I. Valid Allegations

First and foremost, we would like to reiterate that all ten violations of Permit No. 2002.002.03 cited by BCDC in our initial violation notice to Mr. Sanders dated May 4, 2011, were and remain valid, notwithstanding Mr. Sanders' and your continued position to the contrary that they are erroneous, such as in your letter dated August 2, 2013, wherein you state "...literally none of the alleged 'violations' or 'noncompliance' matters ever was factually or legally justified...." Also, as described below, many of Mr. Sanders' and your defenses are either not responsive to our allegations or are lacking in legal merit.

While ten violations of Permit No. 2002.002.03 were cited in our letter dated May 4, 2011, in the subsequent letter dated September 1, 2011, staff voluntarily withdrew from the initial letter the following two violations:

1. The maintenance issues (Special Condition II-B-5); and
2. The failure to submit an executed certification of contractor review form (Special Condition II-U).

Mr. Sanders resolved the three following of the ten total violations within 65 days of May 4, 2011:

1. Continuing to work with an expired permit between August 15, 2010, the date of expiration of Permit No. 2002.002.03, and June 22, 2012, the date of issuance of Permit No. 2002.002.04, an extension of time, which was requested on May 23, 2011, and which established a new expiration date of August 15, 2014¹;

¹ In order to preserve his existing authorization, Mr. Sanders must either execute Permit No. 2002.002.05 or seek an extension of completion time of Permit No. 2002.002.03.

2. The failure to comply with the permit's water quality protection requirements by not providing evidence prior to use of any berth that Mr. Sanders had included the relevant BCDC requirements in the marina berthing agreement (Special Condition II-O-4); and
3. The failure to provide evidence that Mr. Sanders had notified NOAA to update its nautical charts (Special Condition II-AA of Permit No. 2002.002.03).

Mr. Sanders has five unresolved violations:

1. The failure to obtain written plan approval of Phase 1B of the project (generally constituting the marina, harbormaster's office and public access trail surrounding the marina) prior to commencing construction of these improvements (plan approval could have happened in phases but did not) (Special Condition II-A-1);
2. The failure to install and make available all of the public access improvements triggered by marina occupancy including, but not limited to, public shore signage and a physical connection to Pacific Shores Center (Special Condition II-B-2 and II-B-4);
3. The failure to install buoys rather than signs, to alert boaters to sensitive habitat (Special Condition II-H and II-I) or seeking an amendment to modify the special condition in advance of installing signs instead of buoys;
4. The failure to install the visual barrier between the marina parking lot and the adjacent salt pond (Special Condition II-K); and
5. The failure to provide and obtain staff approval for the location of the live-aboard tenants, which should be placed so as to increase security for the marina (Special Condition II-P-1).

Mr. Sanders has made tremendous progress toward achieving compliance with each of these five items. With not much more work he can resolve all of them.

II. Allegation That BCDC Staff Has Failed to Respond to Mr. Sanders

Both you and Mr. Sanders suggest that staff has been unresponsive to Mr. Sanders' submittals. This is untrue. Between March and August of 2012, staff met repeatedly to explain each allegation and respond to all of Mr. Sanders' defenses.

After sending the letter dated May 4, 2011, Mr. Sanders submitted 11 emails and memoranda, dated May 12, May 23, May 26, June 2, June 14, June 27, June 29, August 7, August 18, August 29, and August 31, 2011, each addressing some of the points raised by staff in its enforcement letter. Both Tom Sinclair, former enforcement analyst, and Ellen Miramontes, Bay Design Analyst, responded to Mr. Sanders' submittals through a combination of telephone calls, site visits, emails, the issuance of Permit No. 2002.002.004 on June 22, 2011, a meeting on July 29, 2011, and, finally, a letter outlining the status of the violations, dated September 1, 2011.

Thereafter, during the fall months of 2011, Mr. Sanders submitted four more response memoranda to Mr. Sinclair, dated September 22, September 26, October 6 and October 18, 2011, which in total he believed addressed all ten of the staff's allegations outlined in the initial May 4, 2011 letter. By email dated November 21, 2011, Maureen Sanders, Mr. Sanders' wife, updated Mr. Sinclair, Ms. Miramontes and Mr. McCrea about the status of Mr. Sanders construction activities, both ongoing and planned. Mr. Sanders received a copy of Mrs. Sanders' email.

Also during the fall months of 2011, Ms. Miramontes and Mr. Sanders, Michael Smiley and Valerie Conant, BMS Design Group, were in frequent communication regarding the need for plans to comply with the requirements of Special Condition II-A. On September 1, 2011, Ms. Miramontes and Tom Sinclair met onsite with Mr. Smiley and Ms. Conant. On September 8, 2011, Ms. Miramontes sent Mr. and Mrs. Sanders a letter: (1) conditionally approving plans prepared by Bohley Consulting labeled "Construction Details, Utilities, Lighting, Signing,

Striping, and Dimensioning;" and (2) approving architectural plans prepared by b design studio/solutions. In the letter, Ms. Miramontes also provided Mr. and Mrs. Sanders with comments regarding the existing site conditions and modifications required thereto. During a telephone call with Ms. Miramontes on November 29, 2011, Mr. Sanders indicated that he understood the need for plan review and approval, that he needed to retain a landscape architect to prepare these plans and that "the ball was in his court" to do so.

As described in more detail below under Section V.2. Staff Allegation No. 2, Plan Approval, in March 2012, Ms. Miramontes was contacted by Kevin Stephens, Kevin Stephens Design Group, and his staff member Truman Mak, who stated they had been hired by Mr. Sanders to replace BMS Design Group. In addition to being retained to prepare plans, Mr. Sanders allowed Mr. Stephens and Mr. Mak to act as his representatives in resolving all of the compliance issues. All of the BCDC staff's allegations and all of Mr. Sanders concerns and responses were discussed and, to the extent possible, addressed during a series of six meetings that occurred on March 9, March 28, April 25, June 7, July 11 and August 24, 2012, between Mr. Stephens, Mr. Mak, Ms. Miramontes, and Ms. Klein including but not limited to: (1) what would be necessary to facilitate the production of public access plans that would meet all of the Phase IB permit requirements; and (2) the contents of an amended permit to "fix" many of the violations by shifting some of the late public access into a later phase, shifting the due dates for the various permit phases and authorizing new work, such a fence around the Phase 3 building site.

Therefore, while it is true that staff did not prepare a specific response to each of Mr. Sanders' numerous memoranda, all of his submittals and the issues raised therein were discussed with his representatives and, to the extent possible, addressed by the resulting permit amendment and the anticipation of approving the plans that Mr. Sanders' consultants were drafting and revising based on Ms. Miramontes' feedback. In some cases, staff was able to accommodate Mr. Sanders' suggested solutions and in others, staff was not able to do so. The negotiations were extremely detailed. Mr. Stephens and Mr. Mak stated that they reported the results of each meeting to Mr. Sanders. At each subsequent meeting, the consultants returned to Ms. Miramontes and Ms. Klein with reasons why the requested changes could or could not be accepted based on Mr. Sanders' input. Both parties generated multiple good ideas and the majority of Mr. Sanders' requested permit changes outlined in his memoranda were made. Based on the six meetings with Mr. Sanders' consultants, we collectively developed Permit No. 2002.002.05.

Therefore, upon its issuance on September 19, 2012, staff believed that the amended permit addressed all areas of permit noncompliance that were susceptible to resolution through the permit amendment process. However, rather than executing the permit and providing the Phase 1B public access, on October 11, 2012, Mr. Sanders telephoned and emailed Brad McCrea, Regulatory Program Director, stating that he could not execute the permit because it was full of old and new errors and new conditions which he stated altered the permit and were not enforceable. On October 12, 2012, Mr. Sanders sent Mr. McCrea another email reiterating his position, to which he attached a list of "Simple Errors." As detailed in Mr. McCrea's letter to Mr. Sanders, dated July 16, 2013, on October 28, 2012, he submitted a supposedly complete "Schedule of Errors and Omissions, Amendment 5 of Westpoint Harbor Permit (10/22/12)." Then, after two meetings on December 13, 2012 and January 16, 2013, during which Mr. Sanders' proposed changes were discussed, we issued a new draft on May 20, 2013, to which you responded by submitting yet another list of changes on May 23, 2013. That same day, we met with you to discuss these additional changes, the majority of which were incorporated in the June 6, 2013 version of the permit. Nevertheless, rather than executing this amended permit, on August 5, 2013, we received yet another round of proposed changes called "Corrected BCDC Amendment 5 Staff Report (7/30/13)."

To the extent that there were or are "errors, conflicts or omissions," Mr. Sanders bears responsibility to identify them in advance of executing the original permit. Further, they do not excuse Mr. Sanders from complying with Permit No. 2002.002.03 as signed by him on November 7, 2006². As staff has explained, the amendment process is for updating an issued permit to reflect changed conditions.

In summary, staff has responded to Mr. Sanders' responses (although has not always been in agreement with him) and jointly (not unilaterally) developed Permit No. 2002.002.05, issued on June 6, 2013. In response, Mr. Sanders and you have continued to present the same positions and arguments to staff, failing to understand: (1) the basis of the permit's conditions; (2) why certain conditions cannot be administratively changed; and (3) that the permit may be further amended in the future at such time that circumstances merit further changes.

III. Project Timing and Permit Due Dates

In response to many of the staff's allegations, Mr. Sanders and you provide defenses that imply a lack of understanding of the permit's requirements and due dates or a belief that the due dates set forth in the permit are not mandatory. We understand that Mr. Sanders has experienced delays in the project schedule that he originally developed for his project and on the basis of which the deadlines in the special conditions were developed, as is often the case with projects of this magnitude and complexity. This understanding is the basis for our willingness to move the due date for approximately half of the Phase 1B public access requirements to Phases 2 and 3. This is also why we have indicated that in the future, Mr. Sanders may seek further extensions of time should he find such extensions necessary.

However, when Mr. Sanders executed BCDC Permit No. 2002.002.03, the permit reflected Mr. Sanders' schedule and included special conditions requiring public access improvements to be built concurrent with all but the first phase (Phase 1A) of the project. Whether or not Mr. Sanders liked or agreed with the public access associated with each development phase, the Commission issued a permit that it found met the criteria of the McAteer-Petris Act and Mr. Sanders executed and accepted the benefits of this permit on November 7, 2006. These actions reflected Mr. Sanders' agreement with the permit at the time he signed it. In fact, the text preceding the signature block states "[r]eceipt acknowledged, contents understood and agreed to" (attached to this letter as Exhibit 1).

In his memorandum to staff, dated April 18, 2011, Mr. Sanders states that staff's allegations about due dates:

"...may reflect a lack of understanding of the project and its timing. Site preparation is 95% complete, lacking only grading of the boatyard. The building is essentially complete. The other Phase 1 items (utilities, paths, landscaping, lights) are 80% done and floating docks are 60% complete. Obviously some permit items are unfinished, and the construction order is driven by engineering considerations. Looking forward, the remainder of Phase 1 utilities will be completed in June, after which parking, irrigation, more landscaping, roads, lighting and paths can be started. When completed we can sign off the City's Phase 1 permit and proceed to the next phase, and I expect the City will let us open more paths. It's important to note the public access elements of the project are well ahead of the rest of Phase 1."

² Mr. Sanders executed Permit No. 2002.002.03 a second time on February 20, 2007. This executed original was used to record the permit on title on August 20, 2007 (Instrument No. 2007-124894).

This quote is representative of many other statements and illustrates Mr. Sanders' belief that his private construction schedule takes precedence over BCDC permit requirements. While a permittee is in charge of his own permit schedule, he alone is obligated to pursue an extension of time if the due date cannot be met, or a permit amendment if plans change. To our knowledge, Mr. Sanders has never acknowledged his failure to seek and obtain Commission approval of changes to permit deadlines necessitated by the revised project schedule. Instead, he asserts that his schedule alone prevails and that he is on track.

Mr. Sanders is also mistaken in his belief that the City of Redwood City has the legal authority to relieve or excuse him from complying with the requirements of the McAteer-Petris Act, a state law, as set forth in his BCDC permit. Under the law of this state, a local government does not have the authority to nullify or abrogate the requirements of state law.

IV. "Agreements" Between Mr. Sanders and Staff and the Design Review Board

Often in his defenses, Mr. Sanders raises "commitments," "agreements," or past actions between himself and staff members, which predate the date of issuance of the permit and which contradict the terms and conditions of the permit. The process of negotiation leading up to the approval and issuance of a permit may contain discussion of many alternative project details. However, it is the permit and its terms and conditions that represent the final agreement between BCDC and the permittee. Mr. Sanders has provided no accurate defenses in this regard.

This also holds true for any variations in what Mr. Sanders presented to the Design Review Board (DRB) at each of its three reviews of the project on May 5, 2003, June 16, 2003 and August 7, 2006. The DRB is an advisory body that provides advice to the Commission for its consideration. DRB recommendations are not binding on the Commission or its staff. The Commission then issues a permit that it finds consistent with the requirements of the McAteer-Petris Act (MPA) and the San Francisco Bay Plan. A major tenet of the law is that a project provides the "...maximum feasible public access, consistent with the proposed project, to the bay and its shoreline" (Section 66632.4 of the MPA). As such, Mr. Sanders' permit links specific public access requirements to specific aspects of the phased development. The only legally binding plans under a given permit are those that are incorporated into or otherwise referenced in the permit. The Design Review Board's prior advice is not a substitute for the plan review that is required by the conditions of the BCDC permit.

V. Staff Allegations

V.1. Staff Allegation No. One: Permit Expiration

This allegation was resolved on June 22, 2011 by issuance of Amendment No. Four, an extension of completion time from August 15, 2010, to August 15, 2014³. See Authorization Section I-C of Permit No. 2002.002.03 for prior August 15, 2010 expiration date.

V.2. Staff Allegation No. Two: Commencement of Construction, Including of the Shoreline Access Pathway, without first Obtaining Plan Review and Approval

Special Condition II-A of the permit requires Mr. Sanders to provide final construction drawings for review and approval for each project element prior to commencement of that project element. This special condition is to be read and implemented in conjunction with Special Condition II-B, Public Access Improvements, and all other special conditions that

³ As previously stated, Permit No. 2002.002.03 expired on August 15, 2014. In order to preserve his existing authorization, Mr. Sanders must either execute Permit No. 2002.002.05 or seek an extension of completion time of Permit No. 2002.002.03.

impose requirements that necessitate the construction of improvements such as, but not limited to, trails, landscaping, irrigation, signs, vegetative screening, pathway connections, rest rooms, etc. The permit requires the construction drawings to be submitted to staff for review and approval in advance of the permittee commencing that phase of construction.

Mr. Sanders has defended himself against this allegation by confusing plans he provided to the staff between 2000 and 2007 for the Design Review Board meetings of May 5 and June 16, 2003 and August 7, 2006, as fulfilling this condition. The plans submitted prior to August 21, 2003, the date of issuance of the original permit, could not have fulfilled the requirements of Special Condition II.A. While those conceptual plans were necessary to file the application as complete and enable issuance of Mr. Sanders' permit, Special Condition II-A requires the submittal of construction documents that conform to the requirements of the issued permit. The previously submitted conceptual plans do not provide all of the information required by the permit's special conditions because they lack the necessary details for trails, landscaping, signage and other amenities as authorized and required by the amended permit. Staff received site preparation and marina construction and harbormaster building plans in 2005, 2006, 2007 and 2011. By letter dated November 3, 2005, Brad McCrea informed Mr. Sanders that without a staff engineer, the staff lacked the expertise to review a set of site preparation plans for road improvements and basin surcharge and, as a result, work could commence but that "...the responsibility for permit compliance ultimately lies with Mr. Mark Sanders" (attached as Exhibit 2 to this letter). Staff did not receive public access and landscaping plans until 2011 and 2012, at which point Ms. Miramontes issued a letter dated September 8, 2011, an email dated September 22, 2011, and other responsive emails and plan notes dated October 1 and October 19, 2011, and March 19, March 20, June 8, July 11, July 20, July 25, September 10, October 29, November 12, November 15, November 20, November 27, November 29, and December 22, 2012.

Specifically, Mr. Sanders has raised as a defense to this allegation that "four drawing packages control development on the site," which, as stated above, date from prior to permit issuance. He states that two of the four are 60 percent and 80 percent complete (Memo from Mark Sanders to Tom Sinclair dated April 18, 2011), affirming our point above that they are not of the detail nor do they contain the information required by the permit.

Mr. Sanders also raised as a defense in his memorandum to us dated May 26, 2011, that Brad McCrea and Steve McAdam told him (no date provided) that the Commission "did not have staff expertise to review the (engineering) drawings" and left him in charge of ensuring that construction proceeded in accordance with them. As evidenced by reviewing the explicit language in the letter cited above and attached to this letter as Exhibit 2, it did not in any way affect Mr. Sanders' obligation to comply with Special Condition II-A of his permit then or now by obtaining written plan approval for all project elements prior to commencing construction of that phase. To the contrary, the letter was explicit about a staff deficiency in 2008, which was relevant only at that time for that plan review and in no way relieved Mr. Sanders of all future required plan review.

In his memorandum dated June 2, 2011, Mr. Sanders states that he does not know what is and is not approved because BCDC staff does not send him stamped copies like some other agencies. BCDC staff sends a letter of approval, partial approval, conditional approval or denial upon receiving and reviewing plans and has followed this standard practice with Mr. Sanders. Mr. Sanders has received two such letters from staff since issuance of his permit. Brad McCrea sent the plan review response letter cited above and attached to this letter as Exhibit 2, and Ms. Miramontes sent a conditional plan approval letter dated September 8, 2011 (attached as Exhibit 3 to this letter). Further, Ms. Miramontes provided written comments to landscaping plans by email dated September 22, 2011 (attached as Exhibit 4 to this letter), among the 16 other written comments cited a few paragraphs above. Mr. Sanders and/or his representatives have also received many emails from Ms. Miramontes in 2012 in response to the draft and preliminary

public access and landscaping plans that his representatives prepared. That said, if indeed it is the case that Mr. Sanders does not know what plans are and are not approved, it is his and not staff's responsibility to inquire whether he has the necessary plan approval for each successive phase of work that he intends to commence prior to commencing that work.

Notwithstanding his position that he is in compliance with the BCDC permit's requirement for plan review, Mr. Sanders also appears to concede that plan review and approval is required because he has engaged two landscape architecture firms to prepare the required public access plans. On or about September 20, 2011, Mr. Sanders employed BMS Design Group, who had prepared the conceptual landscaping and public access plans for the Design Review Board meetings and were, therefore, familiar with the project. BMS Design Group made excellent progress towards the preparation of construction documents Mr. Sanders replaced BMS Design Group with another design firm prior to completing the work.

During a conversation on November 29, 2011, Mr. Sanders informed Ms. Miramontes that he was determining whether to continue using BMS Design Group or another firm. After a two-month gap in progress, on February 19, 2012, Mr. Sanders informed Ms. Miramontes that he had retained Kevin Stephens, Kevin Stephens Design Group (KSDG) to complete the construction drawings. As stated in Section II above, staff met with the principal of KSDG and/or his representatives on March 9, March 28, April 25, June 7, July 11 and August 24, 2012, and exchanged numerous phone calls, letters and emails preceding and following each of these meetings.

KSDG prepared and provided the necessary landscaping and public access plans and, in fact, came close to submitting final plans for plan approval. On November 16, 2012, by email and using BCDC's FTP site, Silvia Robertson, working for KSDG, submitted a set of revised signage plans. By email dated November 29, 2012, Ms. Robertson submitted an updated PDF set of WPH signage, planting, and irrigation plans and requested BCDC's address so she could post a hard copy. Ms. Miramontes provided Ms. Robertson with BCDC's mailing address the same day. On November 30, 2012, KSDG submitted by courier a set of plans entitled "Westpoint Harbor Marina, Existing and Proposed Public Access Plans," prepared by KSDG and dated September 11, 2012. On December 19, 2012, Ms. Robertson provided Ms. Miramontes with a set of revised signage plans and indicated that she would post a full size hard copy. On December 22, 2012, Ms. Miramontes provided Ms. Robertson with comments on the revised signage plans that she had submitted on November 16, 2012. Staff did not receive revised signage, planting, and irrigation plans following its last communication to Ms. Robertson on December 22, 2012. Submittal of these final revised plans remains outstanding and staff would welcome their arrival.

Finally, during a site visit on November 21, 2013, the staff observed that Mr. Sanders had undertaken new trail construction at the site nearly completing the marina perimeter trail, entrance overlooks, West Point Slough overlook and connection to Pacific Shores Center. Staff also observed that Mr. Sanders had installed additional landscaping. On the one hand, staff was pleased to observe these long overdue improvements. On the other hand, staff was dismayed that Mr. Sanders had undertaken this work without first obtaining written plan approval since he had been notified of this outstanding requirement, was in the process of preparing plans and his agents had received comments from Ms. Miramontes about what remained to be done to gain plan approval. During the site visit, Mr. Sanders stated that the work east of the harbormaster's office was a waste of \$100,000 because he would have to destroy the trail to

build the future fuel docks and that he had built it under BCDC staffs' direction that he must⁴. He also stated that he had submitted plans to which we did not respond within 45 days and that they were therefore deemed approved. Finally, he implied, though did not make explicit, that he had undertaken the recent work pursuant to these plans.

As the plan review history explained in this section and also in Section II above describes, Ms. Miramontes has responded in a timely fashion to each of Mr. Sanders' plan submittals and he does not have defacto plan approval as a result of staff's failure to respond to a plan submittal within 45 days. Further, even if that were the case, plans must be consistent with the permit's requirements and cannot supplant the permit's requirements if submitted with information that is inconsistent with the permit's requirements.

Along with the other outstanding plans, Mr. Sanders must submit and obtain written plan approval of plans for the trail construction along the eastern marina edge. As stated above, the permittee should not assume that his interpretation of compliance status is consistent with that of the staff. He should first inquire to make sure that all work he undertakes occurs in a manner that is fully consistent with the permit's requirements.

In summary, Mr. Sanders is close to resolving the violation of Special Condition II-A, Plan Review. He should revise the landscape and signage plans, as directed by Ms. Miramontes in November and December 2012 and submit them for staff review and approval. He also requires plan review and approval for site furniture, lighting and irrigation plans. Mr. Sanders should also execute Permit No. 2002.002.05. Modifications to the plans may be necessary depending on the contents of the corrected permit, further revisions to which are discussed in Section VI of this letter.

V.3. Staff Allegation No. Three: Failure to Install the Public Access Improvements Required by Special Condition No. II-B-2 and II-B-4 Including Removal of Privatizing Signage, Completion of Trail and Landscaping, Posting of Public Shore and Public Shore Parking Signs, Connection to Pacific Shores Center, and Public Access on Guest Berth Docks

Westpoint Harbor is required to construct and make available to the public a decomposed granite public access trail around the entire marina with irrigated landscaping adjacent to the trail, a connection to the adjacent Pacific Shores Center development, and three viewing areas, two of which are at the end of each levee forming the marina entrance and the third of which overlooks Westpoint Slough at the southeast end of the development. Other required public access improvements include three public restrooms (now administratively reduced to two), 12 public shore parking spaces, public access from land by pedestrians to the guest berth docks, public shore signage and a landscape screen between West Point Marina and the adjacent salt pond to the south.

Mr. Sanders chose to build the marina in phases, commencing with basin excavation, settlement of the future upland, and installation and occupancy of the marina berths. This was originally included in Phase 1 and included portions of the public access outlined above. During construction, Mr. Sanders sought an amendment to the permit to split Phase 1 into Phases 1A and 1B, which the staff approved on November 1, 2006. Phase 1A required no public access, whereas Phase 1B required all of the former Phase 1 access.

⁴ Staff assumes that this was a conclusion Mr. Sanders' reached during the meeting on August 21, 2013. What he failed to understand, as has been stated previously in all communications from BCDC, is that no work is to occur in advance of obtaining written plan approval for that portion of work, which Mr. Sanders has not yet obtained.

The due date for the public access required by Phase 1B was prior to occupancy of the marina berths with tenants. As outlined in Will Travis' letter dated April 11, 2011, and Tom Sinclair's letter dated May 4, 2011, the public access improvements were not installed as required by the permit prior to marina berth occupancy and these noncompliant conditions remain in place as of the date of this letter, though Mr. Sanders is close to coming into compliance with Permit No. 2002.002.03 or Permit No. 2002.002.05, should he choose to execute this latest amendment.

As mentioned on Page 4, in his memorandum dated April 18, 2011, Mr. Sanders provided a defense to the staff allegation that he had failed to construct and/or install facilities required by the amended permit. Mr. Sanders appears not to understand the BCDC permit or chooses to ignore its requirements. Rather, Mr. Sanders seems to be following his own schedule rather than the one required by the BCDC permit, which, as stated above, can be modified upon request and, in fact, was modified by the first permit amendment and has again been modified in the unsigned copy of Permit No. 2002.002.05, first issued on September 19, 2012, and then re-issued on June 6, 2013, with the third revised version issued with and attached to this letter and discussed in Section VI.

Mr. Sanders has also stated that he did not request that the public be able, let alone required, to gain access to the marina docks, including the guest berth docks, from land in his permit application. Regardless of whether or not the original application included a proposal for public access to the marina docks, as previously stated in this letter, BCDC permits are issued with conditions of approval and the Commission found that providing access to the marina docks, including the guest berth docks, from land, among the other public access requirements, constitutes maximum feasible public access consistent with this project. Exhibit A to Permit No. 2002.002.03, a map of the areas the permit requires to be designated as public access areas, depicts both of the guest berth docks as public access areas. Mr. Sanders has even fulfilled the requirement to record a legal instrument (Instrument No. 2007-124895) on title to permanently guarantee the required public access areas and the guest berths are included in that instrument. Unless and until Mr. Sanders executes Permit No. 2002.002.05, which modifies the required public access, the requirements of Permit No. 2002.002.03 remain in force.

In his memoranda dated May 26, 2011, and October 18, 2011, Mr. Sanders provided the following defenses to staff's allegation of failure to provide public access in the manner required by the permit:

1. **Redwood City.** Mr. Sanders states that the Redwood City Use Permit prohibits access because the site is unsafe. As noted in Section III, Project Timing and Due Dates, a local government lacks authority to nullify a requirement imposed under state law. If the requirements of various land use regulatory agencies conflict with one another, such conflicts can and must be resolved by seeking and obtaining appropriate permit amendments to resolve the conflicts. A permittee is not at liberty to unilaterally decide which permit authority is to be given precedence. Moreover, the BCDC staff responded to this allegation by: (1) stating that it would readily authorize a fence around the future Phase 3 building sites so that Mr. Sanders can fulfill the City's safety requirements and his concerns about risk reduction while opening the west end of the site to public access; and (2) demonstrating its willingness to reduce the public access associated with Phase 1B by postponing portions of it until Phases 2 and 3.
2. **Pacific Shores Center.** Mr. Sanders states that the neighboring Pacific Shores Center (PSC) has not extended its access to the property line and, therefore, his shoreline trail would have no connection across the "Cargill Channel." The status of his neighbor's site is irrelevant to Mr. Sanders' fulfillment of his permit requirements. As required by Permit No. 2002.002.03, Mr. Sanders must build the public access improvements on the property he controls, regardless of whether or not the neighboring property owner has

complied with its obligations. Nevertheless, by site visit dated November 21, 2013, the staff met with Chris Fargas, former Property Manager for Equity Office Partners (EOP), which manages PSC. Upon reviewing their files and conducting a visit of this portion of the site, the parties determined that PSC had not completed its obligations under its BCDC Permit No. 1998.021. PSC will enter into a contract to have a short decomposed granite connector trail built to its property line. By email dated May 12, 2014, PSC provided Adrienne Klein with a proposal to which we responded on June 3, 2014, to which they subsequently responded on July 8, 2014, resulting in BCDC staff approval, dated July 10, 2014, of a plan to install the trail on PSC's property to its property line (attached as Exhibit 5 to this letter). During a site visit to Westpoint Harbor, also on November 21, 2013, we observed that Ms. Sanders had constructed a trail at the northwest end of his property, presumably to his property line, albeit without written plan approval.

3. **Adherence to the Permit's Schedule.** Mr. Sanders states that public access furniture will be installed when utilities and paths are complete and when Redwood City allows access to the public. He also states that public access signs and furniture are an attractive hazard while trails are incomplete and construction is ongoing. The BCDC permit requirements hinge on internal requirements and not external limitations. However, if an external conflict presents itself, it is a permittee's obligation to work with BCDC to determine in advance of permit deadlines how to resolve the issue, which may include a permit amendment to extend deadlines among other options. The public access furniture and signs should be installed immediately upon obtaining plan approval for those improvements because they were to have been installed prior to the use of the marina berths.

Upon discussions with Mr. Sanders and Redwood City staff, BCDC staff and Mr. Sanders and his representatives developed a strategy of installing a fence around the Phase 3 building sites prior to providing public access to alleviate concerns about public safety and liability. As such, Mr. Sanders requested and staff authorized the installation of a fence. However, Mr. Sanders has declined to sign either of the two versions of Permit No. 2002.002.05 issued on September 19, 2012 and on June 6, 2013, authorizing the installation of the fence and, therefore, precluding the opening of the public access.

4. **Landscaping.** Mr. Sanders states that the landscaping is partially complete. The staff concurs with this statement. As also described in Section V.2, Plan Approval, all of the landscaping that has been installed has been installed without prior plan approval. During the six meetings with KSDG described in Section II above, and in the letter dated September 8, 2011, Ms. Miramontes informed Mr. Stephens that Mr. Sanders could retain much of the unauthorized landscaping but that he would have to possibly remove one species and relocate some trees because their placement was inconsistent with the permit's requirement to minimize adverse effects on species. Even if Mr. Sanders were to execute Permit No. 2002.002.05, re-issued on June 6, 2013, he would remain out of compliance with the landscaping requirements for Phase 1B because he has not yet obtained written approval of landscaping plans nor installed the remaining required landscaping associated with Phase 1B, which was due prior to marina occupancy.
5. **Public Access Use.** Mr. Sanders states that the public access areas that are open are the main roadway and footpaths from Seaport Boulevard to the harbor master building, and connecting paths to the docks, parking and guest docks. Mr. Sanders is using his own definition of "open" rather than following the terms of his permit. There are no public shore or public parking signs posted. Further, Mr. Sanders has made members of the public, including BCDC staff, unwelcome on the property. For example, in

December 2009, a member of the public notified BCDC Commissioner Jim McGrath that Mr. Sanders had approached him in the marina parking lot and informed him that Westpoint Harbor is private and there is no access to the water from there. This would have been an accurate statement had Mr. Sanders stated that he was late in providing required water access at his privately owned boat launch ramp. As a result of this report, staff reviewed Mr. Sanders' permit, conducted a site visit and, upon identifying the allegations that are the subject of this letter and other letters, began pursuing resolution of them. In February 2012, another member of the public notified BCDC that each time he had taken a walk on the property, Mr. Sanders had given him permission to be on the private property as long as he remained on the driveway and did not go any further but that during his most recent walk Mr. Sanders came out "like a bulldog," told him to leave the private property and stated, that there "never has been and there isn't now any public access at this marina" and that the provision of public access is at his discretion.

On May 8, 2012, Brad McCrea, Regulatory Program Director, John Bowers, Staff Counsel, Ellen Miramontes, Bay Design Analyst, and Adrienne Klein, Chief of Enforcement, conducted an unannounced site visit and experienced Mr. Sanders' approach to unrecognized members of the public. Mr. Sanders approached the four people in the northwest corner of the property at fast speed in a large backhoe in a threatening manner.

In June 2012, a third member of the public notified staff that he was refused access to the boat launch ramp to launch a kayak and told he was trespassing. He said it was a very unpleasant exchange. In November 2012, with the knowledge that public access was indeed required, this same member of the public contacted Westpoint Harbor by telephone and was informed by "Doug" (Doug Fermon, Mr. Sanders' marina manager) that there was no schedule for allowing public access at the marina.

Mr. Sanders states in his communications to staff and during the staff's site visit on May 8, 2012, that this tight control of the public at the property is necessary for the public's safety and to limit his liability. Neither of these considerations is an excuse for Mr. Sanders to violate the requirements of the permit. As well, solutions to Mr. Sanders concerns are addressed if Mr. Sanders signs BCDC Permit No. 2002.002.05.

6. **License Agreement.** Mr. Sanders states that the south side of the property is restricted by a license agreement with Cargill. He has not provided a copy of this agreement to staff since the issuance of our letter, dated May 4, 2011. In the event that such an agreement exists, private agreements do not excuse a permittee from complying with the requirements of an applicable land use permit. It is incumbent on permittees to raise such issues, before, not after, the permit is finalized, issued and signed. In addition to the parking lot that Mr. Sanders has already constructed along the southern boundary of the property, Mr. Sanders is required to install a vegetative buffer and overlook of the habitat at the southeastern edge of the site, also within the property boundary.
7. **Gates.** The three gates blocking paths to and from the marina are on Cargill property. The BCDC staff does not know to which gates Mr. Sanders refers. Nevertheless, the BCDC permit does not require any improvements, public access or otherwise, on Cargill's property. Rather, the BCDC permit requires improvements on Mr. Sanders' property.
8. **Vandalism.** Mr. Sanders states he has difficulty with off-road vehicles, bikers, shooters, runners, and others who are attracted to Phase 2 and 3 areas because of the uneven terrain. Such external circumstances do not relieve Mr. Sanders of his obligation to comply with the terms and conditions of his permit. At most, they may provide the

basis for seeking one or more amendments to the permit's terms and conditions to address these circumstances. Any such amendments must be applied for and obtained before, not after, passage of the permit's compliance deadlines to avoid civil liability for permit violations. As stated in Section V.3.1, Permit No. 2002.002.05 authorizes fencing around the building envelopes so that the public will be confined to the public access areas and parking lot. Mr. Sanders may install the fence as soon as he executes the permit and obtains staff approval of plans for the fencing.

In Item 3 of an undated memo called "Allegations detailed in Tom Sinclair May 5, 2011 letter", and received by BCDC by email dated June 2, 2011, Mr. Sanders provided the following defenses:

1. **Phasing of Public Access.** Mr. Sanders states that completion of special conditions "prior to installation of any structures in Phase 1A is not possible since many items require Phase 1B construction (launch ramp completion; restrooms and showers; roads and parking; guest berth completion, etc.)." He directs staff to see correspondence on this subject showing that the intent of Phase 1A was minimalist effort to get the marina open (road, parking, three docks and harbormaster) with most amenities following in Phase 1B. Mr. Sanders suggests that DRB phasing drawings are helpful here.

Staff has not suggested that Mr. Sanders was to have provided any public access associated with Phase 1A of the project. Mr. Sanders' defense does not accurately reflect the due date for Phase 1B public access improvements, which is marina occupancy. Some of the items he lists as not yet constructed are public access amenities that have been due since marina occupancy. Staff has agreed to move the due date for some of these items, such as the public access along the northeast side of the marina basin, from Phase 1B to Phase 2. However, until Mr. Sanders executes Permit No. 2002.002.05, the scope of the currently due public access under executed Permit No. 2002.002.03 remains more extensive than it would be if he were to execute Permit No. 2002.002.05.

As stated in Sections IV and V.2 of this letter, the DRB drawings facilitated the development of the permit and, in drafting the permit, staff followed Mr. Sanders' proposed schedule to the extent possible. As also stated elsewhere herein, the time to have notified staff that the public access due dates were not feasible was either before executing the permit and/or after becoming aware of a change in the schedule that would affect it and necessitate a modification thereto, which should have been codified in an amendment received and issued prior to marina occupancy.

2. **Public Boat Launch Ramp.** In response to staff's assertion that the 2,160-square-foot, two-lane signed public boat launch ramp is not in place nor accessible, Mr. Sanders states that construction of the ramp was moved to the site preparation phase of the project as part of a permit amendment so the ramp could be formed and poured before the marina basin was flooded because it made for a stronger and more durable ramp. While this may be true, the completion of the launch ramp was to have occurred at the time of marina occupancy. If conditions, such as settlement and paving delays, made this infeasible, Mr. Sanders should have sought a permit amendment in advance of marina occupancy.

Mr. Sanders states that ramp floats, water, fire protection, lighting, parking and the ramp road are not permitted in Phase 1A and that this is also noted on the BCDC DRB marina phasing drawings. Again, staff has not alleged that any public access was associated with Phase 1A. Also, Mr. Sanders could have, but did not, raise any of these considerations during discussions leading up to the finalization and granting of the permit. Instead, he signed and accepted the benefits and requirements of the permit, seemingly without regard to these considerations.

Pursuant to the requirements of Permit No. 2002.002.03, issued on November 1, 2006 and executed by Mr. Sanders on November 7, 2006, the boat launch ramp remains overdue since the date of marina occupancy, which occurred on or about September 2008. The new due date for the boat launch ramp, should Mr. Sanders elect to execute Permit No. 2002.002.05, would be 120 days from permit issuance.

3. **Vehicle and Boat Trailer Parking.** In response to staff's assertion that none of the parking spaces for vehicle and boat trailer parking are signed for public use, Mr. Sanders stated that the road and parking to the launch ramp are in Phase 1B, so parking cannot be signed beforehand. He states that the launch ramp floats would be complete as of June 2012 and that the underground utilities to the ramp were completed in July 2011. He states that this allowed the road/parking area to be graded and rocked in preparation for paving, curbs and gutters, and that with the road and parking areas completed and street lights and fire protection installed, he can then open the launch ramp.

As stated above, the Phase 1B public access improvements, of which the boat launch ramp and its associated parking are part of, were and remain due as of the date of marina occupancy, which occurred on or about September 2008. Mr. Sanders can partially resolve this violation by signing Permit No. 2002.002.05, which moves the due date for four of the 12 public shore parking spaces from Phase 1B to Phase 3. He must sign the boat launch as public and make the marina west of and including the launch ramp available to the public.

4. **Public Shore Parking.** In response to staff's assertion that none of the required public parking signs were installed, Mr. Sanders states that the legal instrument prepared by BCDC legal requires three locations with four public parking spaces each but that all parking is publicly accessible. Mr. Sanders also states that the four Phase 1A parking spots are marked, but that the Phase 2 and 3 locations are not since they do not yet exist. Under Permit No. 2002.002.03, 12 signed public shore parking spaces are required to have existed since marina berths were occupied, which was approximately September 2008.

Pursuant to the requirements of Permit No. 2002.002.03, issued on November 1, 2006 and executed by Mr. Sanders on November 7, 2006, 12 of the total number of parking spaces must be designated exclusively for public access. The requirement to record a legal instrument does not satisfy the requirement to install public shore parking signs to designate spaces as public. While Mr. Sanders installed stenciling on the pavement at four of the parking spaces (without plan approval), stenciling does not meet the permit's requirement to install BCDC public shore signage pursuant to staff approved plans, which Mr. Sanders has not yet done.

Mr. Sanders can resolve this violation by: (1) signing Permit No. 2002.002.05, which moves the due date for four of the 12 public shore parking spaces from Phase 1B to Phase 3 and changes the public shore parking sign requirements so that a grouping of four spaces can be signed with fewer than four signs; and (2) submitting and obtaining plan approval of public shore parking signage plans and installing the signage at eight parking spaces pursuant to staff approved plans.

5. **Phase 1B Public Access Improvements.** In response to staff's assertion that the 83,500 square feet of walkway, although partially constructed, was not completed and includes unauthorized encroachments of fire suppression equipment and at least one utility structure in the pathway, Mr. Sanders states that the pathway authorized by BCDC and Redwood City in Phase 1A is from the street entrance to the harbor house. He also states that the pathway from Pacific Shores Center along the waterfront is not yet allowed by either Pacific Shores Center or the City due to construction activities

and consequent danger to the public (open trenches, holes, and exposed utilities), although they are partially constructed. Finally, Mr. Sanders states that pathways beyond the harbormaster building and boatyard areas are similarly restricted and that the permit notes that "not all of the public access areas maybe be laid out and "rocked" in Phase 1A, but must be completed by the end of Phase 1B."

Mr. Sanders' defense cites other agency requirements and neighboring property conditions as if they supersede his BCDC permit requirements, which they do not. Again, it is the permittee's responsibility to seek and obtain reconciliation of any inconsistencies or conflicts among the requirements of various public agencies through means which may include appropriate permit amendments. A permittee does not have the ability to unilaterally choose which agency's requirements he is going to honor to the disregard of another agency's requirements. Mr. Sanders is not liable for alleged conditions on neighboring property nor are they relevant to his ability to fulfill his permit obligations. We have not alleged that any public access was required in Phase 1A.

Pursuant to the requirements of Special Condition II-B-4 of Permit No. 2002.002.03, issued on November 1, 2006 and executed by Mr. Sanders on November 7, 2006, Mr. Sanders is required to have installed the public access improvements listed as Items "a" through "i" on pages 8 and 9 "prior to the use of any structure authorized herein (including marina berths) under Phase 1B of the project..." (attached as Exhibit 6 to this letter).

Mr. Sanders can resolve this violation by: (1) executing Permit No. 2002.002.05, which moves the due date for the public access beyond the boat launch ramp from Phase 1B to Phase 2 and authorizes a fence around the Phase 3 building site in the area where the Phase 1B public access and associated improvements remain due; and (2) submitting and obtaining written plan approval of plans for public access landscaping and improvements (such as benches, tables, trash cans, and various types of public shore, public shore parking, guest berth and public boat launch ramp signs) and installing the public access landscaping and improvements pursuant to the staff approved plans, as required by the modified requirements of Special Condition II.B.4.

6. **Pedestrian Access Connection Between Westpoint Harbor and Pacific Shores Center.** In response to staff's assertion that the pedestrian access connection from the Pacific Shores Center along the shoreline has not been constructed...and is presently blocked by a fence and "no trespassing" signs, Mr. Sanders states that the Pacific Shores Center agreed to license connections to their paths, with conditions "when they consider it safe and not a danger to employees."

Mr. Sanders has dismissed his BCDC permit requirements and states that Redwood City also requires Westpoint Harbor to restrict access to this area until the City deems it safe. He also states and that the pathway connecting to the future boardwalk fronting on the retail area is not due until Phase 3, which is true and which staff has not asked Mr. Sanders to presently complete.

One of the primary reasons staff initiated this enforcement action was to obtain the shoreline public access connection between Pacific Shores Center and Westpoint Harbor. Both Mr. Sanders and Pacific Shores Center are obligated to construct a shoreline trail to their respective property boundaries that cohesively join the two paths. Since the commencement of this enforcement action, Mr. Sanders has not submitted any documentation that explains the apparent "license connections" and how they might impede provision of the public access that he is required to provide on his property since marina occupancy.

As stated above, on November 21, 2013, the BCDC staff met with Kris Vargas, formerly of Equity Office Partners and then onsite manager for the Pacific Shores Center. PSC cited no impediments to completing the trail connection to its property line and had no knowledge of any agreements with Westpoint Harbor that would prevent Westpoint Harbor from completing its trail to its property line. PSC stated their full willingness to cooperate with Westpoint Harbor to ensure the two trails are seamless at their point of connection and has since obtained plan approval for this construction by letter from Ms. Miramontes to Natalia Morales, Equity Office Management, dated July 10, 2014 (copy attached as Exhibit 5 to this letter).

Mr. Sanders says that the signs and fencing blocking the crossing over the Cargill Channel preceded Westpoint Harbor. Whether or not this is the case, if the signs and fencing are located on Westpoint Harbor's property or within property that Westpoint Harbor leases, as represented by Mr. Sanders in the original permit application, the signs and fencing can and must be removed at the appropriate time. Further, if necessary, a simple meeting between PSC, Westpoint Harbor and BCDC can identify the steps necessary to achieve the connection. If Mr. Sanders still believes he has legal interest issues, he should provide the appropriate material to us for our review and consideration.

7. **Public Access by Pedestrians on the Guest Berth Docks.** As offered by staff on August 21, 2013, and requested by you on Mr. Sanders behalf by email, dated August 22, 2013, the newly enclosed Permit No. 2002.002.05 transfers the requirement to provide public access on the water from the guest berth docks to the fuel dock, in addition to precluding access to all marina docks. We are able to make this change administratively because Mr. Sanders has agreed to continue to provide some on-water access.

In light of the above change to the permit's requirements, the following arguments are now moot. However, we are including a response to your arguments for clarity.

In response to staff's allegation that the ten guest berths (required by Special Condition II-B-4, Phase 1B, item e, of Permit No. 2002.002.03, issued on November 1, 2006 and executed by Mr. Sanders on November 7, 2006) had not been made available for public access and identified with signage, Mr. Sanders stated that forty guest berths (1,000 feet of dock accommodating different boat lengths) with signs designated by the Department of Boating and Waterways are in place. He stated that the first docks installed at Westpoint Harbor were the guest docks, and a decomposed granite path to the docks was installed for access. Since opening, Mr. Sanders stated that Westpoint Harbor has accommodated large numbers of guest boats and visiting clubs and groups, and is the only facility in the South Bay that does so. Mr. Sanders stated that Westpoint Harbor allows the local yacht clubs to sponsor events at Westpoint Harbor without charge, and that it also hosts the Stanford Triathlon and America's Cup syndicate.

While staff commends Mr. Sanders for the various clubs and groups he accommodates at Westpoint Harbor, the examples he has cited do not fulfill the requirements of the former permit. The guest berths were required to be open and available to the public, including by people accessing Westpoint Harbor from land rather than only from the water and not those who are invited by Mr. Sanders or otherwise affiliated in any way with Westpoint Harbor. In order to inform the public that the guest berth docks were to have been used by them, the permit required that Mr. Sanders install public shore signage on the landward side of the guest berth docks, pursuant to staff approved plans. (The amended permit requires the fuel dock to be similarly signed.)

Permit No. 2002.002.05, re-issued on June 6, 2013, and not executed by Mr. Sanders, significantly, reduces the amount of public access required on the guest berth docks in recognition of Mr. Sanders concerns about the safety of his guest boaters' vessels and liability associated with non tenants on any of his boat docks. As to the question of losing his insurance by providing a public access dock, staff has provided legal indemnity citations. It is unknown whether or not Mr. Sanders shared these citations with his insurer. Said citations were not directly addressed in the letter from Lynn L. Krieger, Thomas, Quinn and Krieger, LLP, to Mr. Sanders, dated August 20, 2013 and provided to staff by email from you dated August 22, 2013. In his letter to you dated July 17, 2013, Mr. McCrea stated that the proper way to resolve this issue would be by requesting a further amendment to this permit, which would be a material amendment, during which the arguments made in Ms. Krieger's letter would be considered as the basis for Mr. Sanders' proposal to eliminate public access to the guest berth docks without providing alternate on-water access. However, since Mr. Sanders has agreed to provide public access on the fuel dock instead of on the guest docks, staff is able to administratively amend the permit, as noted at the beginning of this section.

8. **Landscaping.** In response to staff's allegation that the landscaping was not fully installed (violations of both the public access and visual barrier requirements), Mr. Sanders states that it was excluded in Phase 1A (staff agrees and has not asserted that this was an issue) and only partial landscaping is included in Phase 1B. Staff does not understand what Mr. Sanders means by "partial" and the special conditions clearly define the areas that must be improved with irrigated landscaping. The landscaping plans, when they are approved will specify exactly how many of each species must be installed and in which locations.

Mr. Sanders states that only a portion of the required trail and associated landscaping required by Phase 1B has been constructed. Staff agrees, which is why staff alleges the existence of a violation. Even if Mr. Sanders were to execute Permit No. 2002.002.05, Mr. Sanders would still have not installed all of the required landscaping because he has not fully landscaped the Phase 1B public access area pursuant to staff approved plans.

9. **Site Furnishings.** In response to staff's allegation that the site furnishings, including 20 benches, tables, and trash containers were not in place, Mr. Sanders states that their locations were specified by the Design Review Board on paths not included in Phase 1A and that seating, trash containers and dumpsters are installed on the path/roadway from the entrance road to the harbor building as part of Phase 1A. During our site visit on November 21, 2013, staff observed fewer than 20 benches and fewer than 10 trash containers between the entrance and the harbor master's building, installed without prior plan approval. This does not satisfy the permit's requirements and, as such, additional benches, trash cans and tables must be installed pursuant to staff approved plans that meet the permit's requirements. Dumpsters are not considered public site furnishings.
10. **Public Access and Public Shore Signage.** In response to staff's allegation that none of the fifteen public access or Bay Trail signs were installed, Mr. Sanders states that the pathways and Bay Trail are included in the Phase 1B, which is incomplete. He states that when Redwood City and Pacific Shores Center allow the connection to existing trails, signs can be installed at the start and end of each.

As has been stated elsewhere in this letter, Mr. Sanders' public access was due at the time of marina occupancy and he continues to have an obligation to provide this public access. As has also been stated, conflicts between the BCDC permit requirements, the City's requirements and issues on adjacent property are not valid reasons not to comply with his permit nor do they trump the BCDC permit requirements. As has also already been stated, Ms. Klein communicated with Redwood City and the owners of Pacific Shores Center to address Mr. Sanders' concerns. Finally, staff has drafted an amended permit that delays the due date for some of the currently overdue public access, which will become effective at such time that Mr. Sanders executes Permit No. 2002.002.05. Finally, as of our last site visit on November 21, 2013, the site remains devoid of public shore signage required by Special Conditions II-A and B of the permit and consistent with the BCDC signage guidelines, as explained to Mr. Sanders' agents preparing his plans.

V.4. Staff Allegation No. Four: Failure to Maintain All Required Public Access Improvements

Any defenses to this allegation are effectively moot because the staff elected to withdraw this allegation until such time that the public access improvements are constructed and the site is open to the public, as required by the BCDC permit.

V.5. Staff Allegation No. Five: Signage and Buoys to Alert Boaters to Sensitive Habitat (SC II-H and II-I)

Staff initially informed Mr. Sanders that he could fully resolve this violation and stop the standardized fines from accruing upon obtaining written approval of plans documenting the design and installation of all of the above-required signage and installing the signs in West Point Slough and at the boat launch ramp in conformance with said plans.

In response, in Mr. Sanders' undated memorandum entitled "Allegations detailed in Tom Sinclair 5/4/2011 letter," received by staff on June 2, 2011, and in his memorandum, dated September 26, 2011, Mr. Sanders states that he had partially resolved this violation by: (1) installing 36 signs, in lieu of buoys, alerting boaters not to trespass onto Greco Island due to the presence of sensitive species to comply with the USFWS and USCG; and (2) installing "No wake zone" signs at the harbor entrance and at the West Point Slough Channel entrance, completed by Port of Redwood City pursuant to requirements by the USCG. During a meeting on June 7, 2012, Truman Mak submitted a plan showing the locations of these signs, almost completely resolving the violation. Mr. Sanders can completely resolve this violation by executing Permit No. 2002.002.05, which changes the requirement from installing buoys to installing signs, so that the permit will match the existing and acceptable site conditions.

Mr. Sanders stated that there were no signs at the yet-to-be opened launch ramp because it is incomplete. However, as stated above, unless and until Mr. Sanders executes Permit No. 2002.002.05, the boat launch ramp is required to have been open and posted with "sensitive habitat" signs, among other signs, as of the date of marina occupancy because it is one of the Phase 1B public access improvements. If Mr. Sanders executes Permit No. 2002.002.05, the due date for making the boat launch ramp accessible, including signage, will be 120 days following permit issuance.

V.6. Staff Allegation No. Six: Visual Barriers to Adjacent Salt Pond (SC II-K)

Mr. Sanders stated in his memorandum, dated October 18, 2011, that the distance between the active marina areas and the salt pond is 85 feet wide, the minimum required setback. Staff has informed Mr. Sanders' consultants in the meetings cited above that there is no distance between the active marina area and the salt pond because the parking lot, which is an active marina area, abuts the property line with the adjacent salt pond and, as such, that Mr. Sanders is still required to have installed the landscaped barrier prior to marina occupancy. To resolve this violation, Mr. Sanders must obtain plan approval of a proposed visual barrier prior to

installing the visual barrier, and then install the visual barrier pursuant to those staff approved plans. Mr. Sanders is well on his way to gaining this approval, as advised by Ms. Miramontes in a series of email exchanges between KSDG and Ms. Miramontes during November and December 2012.

V.7. Staff Allegation No. Seven: Marine Toilets (SC II-O-4)

As noted above, this violation was resolved on July 29, 2011 upon receipt and review of the Harbor Rules and Regulations and the berthing agreement.

V.8. Staff Allegation No. Eight: Certification of Contractor Review (COCR) (SC II-U)

As noted above, this violation is not subject to retroactive approval but in the interest of reasonableness, staff elected to withdraw this allegation from this proceeding. Mr. Sanders remains bound by this condition and his failure to comply with it in the future may be handled differently. Neither Mr. Sanders nor his contractors should be working without BCDC-approved plans, and Mr. Sanders should have each contractor execute a COCR, which he should subsequently submit to the BCDC staff. This form is located on the BCDC website under "Forms and Fees."

V.9. Staff Allegation No. Nine: Live-Aboard Boats (SC II-P-1 & II-P-5)

On September 1, 2011, after receiving Mr. Sanders first round of defenses, the staff explained why the special condition was imposed and that it fulfills a unique component of the SF Bay Plan. Along with its detailed explanation, the staff sent Mr. Sanders an example from another marina of how to comply with this condition. To fulfill this requirement, Mr. Sanders is required to provide a current list of the total number of live-aboard tenants and the location for each of them within the marina. This requirement flows from the policies of the San Francisco Bay Plan, which impose a 10 percent limit and require that the live-aboard tenants be distributed throughout the marina. Mr. Sanders also is required to obtain prior written approval from staff that he has completed construction, pursuant to staff approved plans, of restrooms, showers, parking and garbage disposal facilities adequate to serve the live aboard occupants.

Instead, in correspondence received after the letter, dated September 1, 2011, Mr. Sanders repeated his position that he is exempt from this requirement because each berth at his marina has its own sewer connection and is unique in the Bay Area in this feature. He stated, "[f]inally (and most concerning) is our pump-out system. We were the first harbor with pump-out for every slip--a real innovation thanks to you and DBW. BCDC considers this a permit violation because we don't designate specific slips for live-aboards with dedicated sewer hookups. I've explained universal pump-out is a better system and BCDC was aware of it at the time, but without much success (April 12, 2012)."

This defense is non-responsive to the requirements of the special condition, as stated in the staff's letter to Mr. Sanders, dated September 1, 2011, because staff does not know the total number of occupied berths, how many live-aboard tenants are residing at the marina and if they are distributed throughout the marina. Based on prior site visits, staff is aware that Mr. Sanders has constructed the necessary restrooms, showers, parking and garbage disposal facilities. Simply, the berthing of a vessel occupied as a live-aboard at a seweried berth meets the water quality protection requirements of the permit but not the other requirements.

While the layout of the live-aboards should be distributed and portrayed to BCDC, their location is not fixed by the permit and may change, as reflected in Permit No. 2002.002.05, attached.

To resolve this violation, Mr. Sanders must notify staff in writing of the total number of occupied berths at Westpoint Harbor marina (versus the total number of berths), how many live-aboard tenants are residing at the marina and show their distribution therein. Mr. Sanders must conduct this exercise annually rather than every time a live-aboard tenant leaves or arrives at Westpoint Harbor or relocates within it, though every effort should be made to distribute the live-aboard tenants as broadly as possible throughout the marina.

V.10. Staff Allegation No. Ten: Notifying NOAA to update Nautical Charts (SC II-AA)

As noted above, this violation was resolved on July 29, 2011 upon receipt and review of a copy of the letter to Kate Fensterstock, NOAA, dated February 7, 2008, transmitting a post-dredge survey of project area with location of navigational buoys and emails between staff from NOAA, the USCG and WPH regarding updated chart corrections.

VI. Proposed "Corrections" dated July 30, 2013

The staff has reviewed the proposed list of changes, entitled "Corrected BCDC Amendment 5 Staff Report (7/30/13 mls)" to Permit No. 2002.002.05 issued on June 6, 2013, and submitted by letter from you to Mr. McCrea, dated August 2, 2013, and received by us on August 5, 2013.

Enclosed is third revised copy of Permit No. 2002.002.05, dated September 4, 2014, for Mr. Sanders and you to review and execute. For those changes that we have included in the permit, we are not responding to the notes provided by Mr. Sanders and you. For those changes that we have not included, please see the responses below.

In the letter dated July 23, 2013, you state that the permit should be "...factually accurate, graphically correct set of operational regulations that can serve as a stable, comprehensive framework for future marina development and operations." Staff believes the enclosed amended permit meets these terms while remaining consistent with the layout of the original permit and with the McAteer-Petris Act and San Francisco Bay Plan. While we have willingly made these changes, our willingness to do so does not constitute an admission or concession on our part that the special conditions as originally written were "in error" or "mistaken."

VI.1. Requested Changes That Can Be Administratively Made

On Water Public Access Moved from Guest Berths to Fuel Dock. As previously stated in Section V.3 above, during our meeting on August 21, 2013, we suggested that we could accept a conversion of the public access to the water by pedestrians (versus boaters) from a guest berth dock to the fuel dock, as well as the existing required public access at the boat launch ramp (Note 4). In an email addressed to Mr. McCrea, Mr. Bowers, Mr. Buehmann and Ms. Klein, dated August 22, 2013, you summarized this agreement by stating that Mr. Sanders would allow "...public access to the boat launch ramp and the fuel/pump-out dock. As Mr. Sanders' counsel, we have accepted this statement by you on behalf of Mr. Sanders as his request to modify the permit in this regard. We have concurrently modified the permit exhibit to reflect this change, described in more detail below. Please review the language and exhibits and advise us if they are satisfactory. We are able to make this change administratively only because the proposal retains the amenity of on-water access required by the original permit.

Permit Exhibit. Note 14 of the document entitled "Corrected BCDC Amendment 5 Staff Report (7/30/13 mls)" states that "Exhibit A is an old and obsolete illustration predating the initial permit which does not reflect the actual design. While I understand this exhibit was included to show agreed-to fencing, the drawing itself is completely incorrect and would be the source of future problems if not correct. Exhibit A should be changed to drawings approved by the DRB." Mr. Sanders also seeks to remove the reference to Exhibit A2 in the permit's Findings and Declarations, Section III-H.

The sole purpose of Exhibit A is to pictorially denote the public access area to be permanently guaranteed by Special Condition II-B-1 and II-B-2. The exhibit is intended to assist the surveyor retained to prepare the legal instrument in preparing a metes and bounds description of the required public access areas. With Permit No. 2002.002.05, we included a second exhibit (Exhibit A2) using the same base map as original Exhibit A, which became Exhibit A1, to denote the public access areas covered by Phases 1B, 2 and 3, respectively. None of the other information on the map is enforceable or relevant to staff and the language of the permit prevails.

Nevertheless, as noted above, we have prepared and attached two proposed, revised exhibits that remove the shading denoting required public access areas from the guest berths and added shading to the fuel dock. We have also revised the line demarcating Phase 1B to exclude the fuel dock, which is in fact part of Phase 2. Finally, we have converted the two sets of covered docks to uncovered docks and added the date these revisions were made.

We have:

1. Changed Authorization Section I-A, Phase 2, item 3 and Special Condition II-B-4, Phase Two, to remove the permission to construct a third public restroom (Note 8);
2. Reduced the pathway widths from 12 to 10 feet (Note 2) with the exception of the future 15-foot-wide boardwalks;
3. Excluded fishing in the marina basin and limited fishing to areas along Westpoint Slough (Note 12);
4. Reduced the total number of required public restrooms from three to two (Note 8);
5. Given Mr. Sanders 120 days from the date of permit issuance to implement the Phase 1B public access requirements to replace a date certain that has since passed; and
6. Retooled the Findings and Declarations, III-H, to address, though not word for word, Mr. Sanders' proposed changes thereto (Note 26, among others).

VI.2. Requested Changes That Cannot Be Administratively Made

We have accepted as many of the proposed changes as possible and where we have not used the exact proposed language we have attempted to achieve the same intent. Notwithstanding the fact that we are unable to accept each and every proposed change, and as we stated in our letter to you dated July 16, 2013, that amendment (and more so this amendment) are closer to the permit Mr. Sanders wants than the current permit which Mr. Sanders signed and under the authority of which he constructed the Westpoint Harbor marina and, thus, to which he is bound. Further, the amendment resolves many of the violations by modifying missed due dates to future due dates, as also outlined in the letter dated July 16, 2013.

Additionally, as evidenced by staff's willingness to accommodate many of Mr. Sanders' changes non-materially, including due dates for public access requirements which have been willingly advanced, in the future should he find it necessary, Mr. Sanders may seek to further non-materially amend the due dates for the remaining Phases 2 and 3 public access requirements. We look forward to receiving Mr. Sanders' and your comments on the enclosed draft.

We have not changed Authorization Section I-A, Phase 1A, item 15 (Note 5) because to do so would exclude portions of the project from the authorization or require unnecessary restructuring of the amended permit. The authorization section of the permit authorizes work, which is permissive, whereas the special conditions mandate when the public access improvements associated with each phase must be installed. The fact that the overlooks are described in the Phase 1A authorization section even though one of them is not required until Phase 3 is not detrimental. We have included the desired reference to Phase 1.

Note 10 incorrectly states that "...staff ordered work to stop..." To stop work, either the Executive Director or Commission would have issued cease and desist order. We have stated that Mr. Sanders has undertaken construction without plan approval and, therefore, have advised and directed Mr. Sanders that to continue work absent plan approval was illegal and ill advised. However, Mr. Sanders has undertaken further work without plan approval.

We have not changed Authorization Section I-D to include a reference to Pacific Shores Center for reasons cited above in this letter (Note 11). Mr. Sanders can meet local requirements with pavement markings and BCDC requirements with signs, all of which must occur pursuant to written plan approval by us.

We have not changed the due date for the public access associated with Phases 2 and 3 from a date certain, which is within 120 days of permit issuance, to Mr. Sanders' proposed language that reads "[a]s part of the construction of Phase 2/3..." and "[p]hase-in of these amenities will be specified at the time construction drawings are approved by the commission" (Note 19). As stated elsewhere in this letter, at such time that Mr. Sanders believes he may not be able to conform to the currently established timeframe, he may seek a further amendment to this permit.

We have not changed Special Condition II-B-4, Phase 3, item g, to include a reference to local ordinances for reasons cited above in this letter (Note 15).

Similarly, we have not changed Special Condition II-B-10, Visual Access, or Special Condition II-B-, Native Plant Species, to include a reference to CEQA mitigation measures and Pacific Shores Center planting palette (Note 21). You allege but do not explain how the permit's requirements "...violate some mitigation measure, including new planting schemes, signage and removal/replacement of plant types legally installed." As we have stated elsewhere in this letter: (1) landscaping has been installed without plan approval, however, Mr. Sanders will be able to retain the majority of it and has nearly completed the plan review process; (2) the installed landscaping does not match that at Pacific Shores Center; and (3) DRB's direction is advisory and the permit that Mr. Sanders has executed prevails.

We have not changed Special Condition II-P, Live-Aboard Boats, as requested by Mr. Sanders because, as explained in Section V.9 above, to do so would render the permit inconsistent with the San Francisco Bay Plan (Note 24). However, we have changed Special Condition II-P to explicitly state that the location of the live-aboard boats may change. Mr. Buehmann did not state, as Mr. Sanders indicates, that the identification of slips could be removed as a permit requirement because each berth has sewage disposal. Rather, Mr. Buehmann told Mr. Sanders what the permit requires and what our previous correspondences have stated, which is that he has to give the BCDC staff a plan depicting the berth location of live-aboard tenants and a list of the total number of live-aboard tenants. However, the locations of these live-aboard tenants can be changed and relocated. In other words, Mr. Sanders does not have to have dedicated live-aboard slips with different facilities than the ones the recreational tenants use. Mr. Sanders does have to verify that the number of live-aboards is consistent with the permit and that the live-aboard vessels are distributed throughout the marina. Mr. Sanders has failed to provide evidence of either of these conditions.

We have not changed the Findings and Declarations, III-A, Salt Ponds (Note 1). We have thoroughly considered your position and arguments in our staff report entitled "Salt Ponds," dated October 2005, which is available for review on our website. The time to have raised these issues was prior to executing Permit No. 2002.002.03. However, we have modified the Findings and Declarations, III-G, Commission Jurisdiction, as requested.

We have not eliminated Standard Condition K, Should Permit Conditions Be Found to be Illegal or Unenforceable, as requested in your letter dated August 23, 2013. However, we will treat your letter as having preserved your objection to this standard condition for future judicial resolution should circumstances evolve and cause this condition to come into play. We have modified the language of the condition to clarify that a court of law is the entity that is required to find that a condition is illegal or unenforceable.

VII. Conclusion

The goal of this letter is to respond to all 14 correspondences provided by Mr. Sanders and you since June 2011. We urge you to assist Mr. Sanders in prospectively resolving these violations by executing Permit No. 2002.002.05 re-issued on September 4, 2014; obtaining plan approval for the public access and visual barrier amenities required by Permit No. 2002.002.05; installing the public access and visual barrier amenities required by Permit No. 2002.002.05; and meeting the requirements of the live-aboard condition.

Sincerely,



ADRIENNE KLEIN
Chief of Enforcement

Enc.

AK/gg

cc: Mark and Maureen Sanders, Westpoint Harbor
Steve Goldbeck, Deputy Director, SF BCDC
Brad McCrea, Regulatory Program Director, SF BCDC
John Bowers, Staff Counsel, SF BCDC

PERMIT NO. 2-02
Mark Sanders
(Issued on August 21, 2003, As
Amended Through November 1, 2006)
AMENDMENT NO. THREE
Page 34

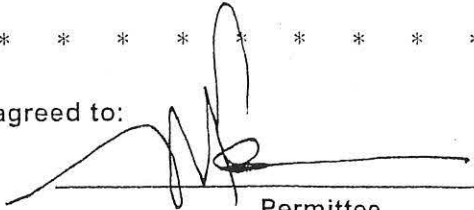
RECEIVED
NOV 14 2006

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at PALO ALTO, CA



Permittee

On NOV 7, 2006

By: _____

MARK SANDERS OWNER

Title



Making San Francisco Bay Better

November 3, 2005

Mr. Pete Bohley
Bohley Consulting
1875 South Grant Street, Suite 550
San Mateo, California 94402

SUBJECT: BCDC Permit No. 2-02; Plan Review; Site Preparation Plans (Road Improvements and Basin Surcharge Plans)

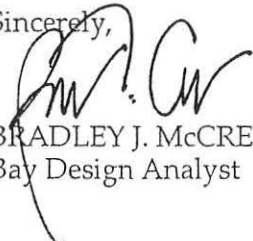
Dear Mr. Bohley:

I am writing with regard to your transmittal, dated October 21, 2005, and one set of Site Preparation Plans. These plans were received in our office on October 24, 2005.

Please be advised that, due to current budget cuts, the Commission does not currently have a licensed engineer on its staff and that we do not currently have the staff expertise to adequately review the above mentioned plans. We have reviewed the plans for consistency with the BCDC permit to the extent possible, but have not reviewed them for compliance with engineering specifications, design criteria and/or all applicable codes and standards. The work that is authorized by the permit may commence, but the responsibility for permit compliance ultimately lies with Mr. Mark Sanders.

If you have any questions, please don't hesitate to phone me at (415) 352-3615. I can also be reached by email at bradm@bcdC.ca.gov.

Sincerely,



BRADLEY J. McCREA
Bay Design Analyst

BJM/ec

cc: Mark Sanders



Making San Francisco Bay Better

September 8, 2011

Mark and Maureen Sanders
16075 Skyline Boulevard
Woodside, California 94062

SUBJECT: BCDC Permit No. 2002.002.04; Conditional Approval of Construction Details, Utilities, Lighting, Signing, Striping and Dimensioning Plans for Westpoint Harbor and Approval of Architectural Plans for the Westpoint Harbor Master Office; Landscape Feedback from September 1, 2011 Site Visit

Dear Mr. and Mrs. Sanders:

Thank you for our meeting and site visit last week on September 1, 2011 at Westpoint Harbor with you, Michael Smiley, Valerie Conant, Tom Sinclair and myself. I appreciated the opportunity to meet with you and view the site. It was valuable to discuss together with Michael Smiley and Valerie Conant the landscape plans which they will prepare to meet your permit requirements.

Following my site visit, I would like to provide conditional approval as well as approval for plans which you have already submitted to our office. I would also like to take the opportunity to relay my initial thoughts on the existing landscaping that will assist you in developing the landscape plans for our review.

My conditional plan approval is for the twenty-six sheets prepared by Bohley Consulting, which are mostly dated March 12, 2007 and are labeled as Construction Details, Utilities, Lighting, Signing, Striping and Dimensioning Plans. These materials were received in our office on June 27, 2011 and have been reviewed pursuant to the authorization and requirements of BCDC Permit No. 2002.002.04.

After careful review of the above-mentioned plans, I have determined that they are mostly consistent with the authorization and requirements of the BCDC permit and are, therefore, **conditionally approved**.

The plans are approved contingent upon the following:

1. **Sheet 2 – Path Detail.** Detail 1 on Sheet 2 shows a cross section of the Bay Trail Path, which indicates that the finished path material would be "4-inch CL2AB (recycled)." As you know, the path was instead finished with decomposed granite, which we prefer and believe is appropriate. Please either revise this detail or provide a new as-built detail to supersede this one that depicts how the path was actually constructed.

2. **Sheet 8 – Grading Plan.** This drawing does not show a path parallel to the shoreline along the southern side of the peninsula as shown on Exhibit A, the Public Access Plan, of your permit. As we discussed, the permit currently depicts a triangular configuration of paths at this location and, as such, either your drawings need to be revised to follow what is required under the current permit or you may request an amendment to the permit to change this path configuration such as keeping the southern leg of the triangle and omitting the north-south leg as we discussed. It is important to us that there be a path parallel to the southern shoreline as required by your permit and shown on Exhibit A.
3. **Sheets 15-18 – Lighting, Signing, Striping and Dimensioning Plans.** The striping and dimensioning shown on these plans all correspond to the authorization under the permit. The plans, however, do not depict lighting for the public access areas nor do they show public access signs. Please provide plans to show lighting within the public access areas and also provide plans to show the required public access signs which should include the following as specified in the permit:
 - a. (15) signed public parking spaces for vehicle and boat trailer parking;
 - b. (12) signs for public parking spaces; and
 - c. (15) BCDC public access signs and also Bay Trail signs at the beginning of each path on the site.
4. **Sheet 20 – Dimensioning Plan.** As noted in Item 2 above, the path parallel to the shoreline along the southern side of the peninsula is not shown on this drawing. Once again, either the drawing should be changed to follow the permit requirements or you need to request a permit amendment and revise the drawings as needed.

I have also reviewed the Architectural Plans prepared by b design studio/solution that include fifteen sheets and are dated August 18, 2008. These materials were received in our office on June 27, 2011 and have been reviewed pursuant to the authorization and requirements of BCDC Permit No. 2002.002.04. After careful review of these plans, I have determined that they are consistent with the authorization and requirements of the BCDC permit and are, therefore, approved.

I would also like to take the opportunity to provide some initial feedback and thoughts I have regarding the existing landscape.

1. **Decomposed Granite Path.** As we discussed, decomposed granite is an appropriate paving material for the public access paths and also what the DRB preferred, although I am concerned about the stability of the path as it is installed. The surface appears to be inadequately compacted as the top is sloughing a bit in areas. We want to make sure that the path will hold up well over time and also want the path to be accessible to all users including those with physical disabilities. Upon obtaining plan approval for the pathway, please ensure that the path is adequately stabilized to accommodate these concerns.
2. **Tree Placement and Selection.** As we talked about in the field, the drawings prepared for the Design Review Board (Exhibit 8 for the August 7, 2006 DRB meeting) did not show any trees directly adjacent to the shoreline nor did they indicate any trees in the triangular point area adjacent to Pacific Shores. You have planted a number of trees in a line along the shoreline and along the perimeter of the point.

The trees were held back from the shoreline in the DRB landscape plans in order to maintain a visual openness to the water from the public access paths. The trees were also held back from the point due to concern for raptors that might prey upon wildlife in the refuge across the slough.

You have planted Monterey Cypress (*Cupressus macrocarpa*) and Cajeput (*Melaleuca quinquenervia*) trees around the site and these tree choices were on the DRB plan, although not in the locations where you planted them. You have also planted a number of Weeping Willow (*Salix babylonica*) and Brisbane Box (*Tristania conferta*), although these tree types were not included on the DRB plan nor were there trees shown in the locations where these were planted.

Although the Cypress and Cajeput trees would not naturally occur within this landscape, they have a more open nature and their aesthetic blends well within this environment. The Weeping Willow and Brisbane Box trees fit less well in this setting. Their vegetation is bulkier and will block wind as you desire, but will also block views.

There may be a way we can work with some of these trees by clustering like species and moving them away from the shoreline. Perhaps they could be planted in massings within your future building sites to provide the wind protection you desire for the marina while at the same time allowing open water views for public access users. The future buildings could then take the trees' place and serve as the wind protection features later.

In short, please provide plans that address these comments and be prepared to revise the as-built and unauthorized landscaping thereafter to match the soon-to-be approved plans.

3. **Seashore Paspalum.** At the end of our site visit, we walked by a stand of golden grass along the shoreline near the Harbor Master Office that you referred to as "Seashore Paspalum." You explained that you had planted it by seed last year to test it out. It is a beautiful grass and I think the aesthetic fits very well with the landscape although I am concerned that it could potentially be invasive to the refuge across the slough on Greco Island. I will try to find out some more information regarding this grass before you use any more of it upon the site. Should we determine that Seashore Paspalum is in fact invasive and poses a threat to the Greco Island and other areas of the marsh, you will need to remove the plants from the property, including all root and rhizome structures. Of course, this would occur pursuant to plan approval that would replace the existing grass with a noninvasive species, should we conclude that we cannot approve the use of this species.
4. **Plant Choices.** The DRB specifically stated that your landscape should not match the Pacific Shores landscape. You shared that the City of Redwood City on the other hand wanted your landscape palette to match Pacific Shores. As we discussed on the site, I think some plants that have proven to do well at Pacific Shores could be incorporated into your landscape while primarily using more native choices and following a more natural, less-water intensive landscape aesthetic as was shown in the DRB plans.

Mark and Maureen Sanders
September 8, 2011
Page 4

If you would like to discuss any of this feedback, please do call me and we can talk about it by phone. Once again, thank you for the site visit. The marina is really a beautiful setting with stunning views and it was wonderful to come experience it. I believe that the public access area and the landscape surrounding it will be a treasured place for the public to come and experience. I look forward to working with you and BMS Design Group further regarding the final public access plans. As you know the final public access plans should include, screening between the marina and adjacent salt ponds, landscaping, irrigation, lighting, signage and site furniture within the public access areas. If you or BMS Design Group would like to coordinate with me during the course of developing these drawings, I am happy to review in-progress drawings, etc. to make the more process efficient. Please remember that this letter does not supersede the contents of your permit and Tom Sinclair's letter dated September 1, 2011 but is rather intended to further assist you in fulfilling the outstanding requirements as soon as possible. If you have any questions, please don't hesitate to contact me by phone at (415) 352-3643 or by email at ellenm@bcd.ca.gov.

Sincerely,



ELLEN MIRAMONTES
Bay Design Analyst

EM/gg

cc: Michael Smiley, BMS Design Group

Subject: Feedback on Westpoint Marina plants

Date: Thursday, September 22, 2011 5:25 PM

From: Ellen Miramontes <ellenm@bcdcc.ca.gov>

To: Michael Smiley <smiley@bmsdesigngroup.com>, Valerie Conant <Conant@bmsdesigngroup.com>, Mark Sanders <mark@westpointharbor.com>, Maureen O'Connor <moc@paspeech.com>

Cc: Tom Sinclair <toms@bcdcc.ca.gov>, Brad McCrea <bradm@bcdcc.ca.gov>, Bob Batha <bobb@bcdcc.ca.gov>, Adrienne Klein <adriennek@bcdcc.ca.gov>

Mark, Maureen, Michael and Valerie,

I have reviewed the drawings from Eggli Landscaping and have the following comments:

Plants for Removal

- Miscanthus sinensis
- Seashore Paspalum

I have looked into both of these grasses and found that they are invasive. With the project's location along the edge of the Bay and directly across from the wildlife refuge, it is important that new invasive species which could spread throughout the Bay are not introduced inadvertently. I have consulted with the refuge manager, Eric Mruz, and also Peter Baye, an expert botanist in the region, regarding these grasses.

Plants to Remain, but not plant more of

- Agapanthus
- Gardenia
- Heuchera
- Salix babylonica
- Washingtonia robusta
- Phoenix reclinata
- Washingtonia filifera
- Dracena
- Phoenix canariensis
- Tristania

These plants which have already been planted don't need to be removed although more should not be planted and some should be relocated. Many of the Tristania conferta and Salix babylonica should be relocated in order to maintain the view corridors required by the permit and also to maintain open views of the water from the shoreline pathway as we have discussed.

The line of Poplars and Monterey Cypress that have been planted along the shoreline edge at the channel were not envisioned in the DRB drawing submittals and present a problem for wildlife living in the refuge. These trees will serve as a perch for raptors that can then prey

upon listed species such as clapper rail, western snowy plover and salt marsh harvest mouse living on Greco Island. The biologist for the refuge, Cheryl Strong, explained these issues to me. The landscape should closely follow the DRB submittals and, as such, these trees should be either removed or potentially moved to another location on the site where they will not present this problem such as within the future building footprints for later removal.

While it is acceptable to mimic some of the plant materials used at Pacific Shores, the use of these should be minimized and the plant palette should be weighted towards the plants shown on the earlier BMS Design Group plans. For example the native *Limonium californicum* should be used instead of *Limonium perezii*.

Please call me with any questions regarding these comments.

--

Ellen Miramontes
Bay Design Analyst
SF Bay Conservation and Development Commission
50 California Street, Suite 2600
San Francisco, California 94111

415-352-3643
<http://www.bcdc.ca.gov/>

ts.

Regards,

----- Forwarded Message -----

From: Valerie Conant <Conant@bmsdesigngroup.com>
To: Ellen Miramontes <ellenmiramontes@yahoo.com>
Cc: Michael Smiley <Smiley@bmsdesigngroup.com>;
mark@westpointharbor.com
Sent: Tuesday, September 20, 2011 11:49 AM
Subject:

Hi Ellen-

I've attached "as-built" drawings we've received from Egli Landscaping.

We would like to create a plant palette acceptable to both you and Mark. Will you

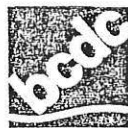
please evaluate the plants listed in these drawings and sign off on those to add to our final plant palette? We will also be including many of the plants from the *Phase I Planting & Furnishing Plan* dated August 7, 2006.

Thanks-
Valerie

Valerie Conant | Senior Landscape Architect

BMS Design Group
414 Jackson Street, Suite 404
San Francisco, CA 94111
T. (415) 249-0130 x207
F. (415) 249-0132
www.bmsdesigngroup.com <<http://www.bmsdesigngroup.com>>

----- End of Forwarded Message



Making San Francisco Bay Better

July 10, 2014

Ms. Natalia Morales
Equity Offices Management, LLC
1700 Seaport Blvd., Suite 100
Redwood City, California 94063

SUBJECT: Proposed Decomposed Granite Pathway at Pacific Shores Development, Redwood City, San Mateo County; Plan Approval; BCDC Permit No. 1998.021.02

Dear Ms. Morales:

We are writing with regard to your July 8, 2014 email to Adrienne Klein and myself as well as the attached July 8, 2014 letter to you from Darren Nosseck at Jensen Landscape Services, Inc. The proposed decomposed granite pathway installation work has been reviewed pursuant to the authorizations and requirements of BCDC Permit No. 1998.021.02. After careful review, we have determined that the plans are consistent with the authorization and requirements of the BCDC permit and are, therefore, **approved**.

Thank you for revising your proposal to clarify that the proposed granite pathway will extend to the east property line shared with Westpoint Marina and also ensuring that the pathway will be permanently maintained over time.

If you have any questions regarding these comments, please don't hesitate to contact me by phone at (415) 352-3643 or by email at ellenm@bcde.ca.gov.

Sincerely,

ELLEN MIRAMONTES
Bay Design Analyst

EM/gg

Condition or the legal instrument shall prevail. The permittee is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization and any legal instruments submitted pursuant to this authorization.

4. **Amendment No. Two.** No final plan review is required for the construction of the southern buffer. However, the buffer must be designed and constructed to be in general conformance with this permit, in that fill in the salt pond should not exceed that authorized herein and the buffer must generally conform to the plans submitted entitled "63 Foot Wide Slope License," pages one and two, prepared by Bohley Consulting and dated July 12, 2006. The final design of the buffer should ensure that appropriate provisions have been incorporated for safety in case of a seismic event.

B. Public Access

1. **Area.** The approximately 298,000-square-foot area and at least 10 percent of the retail building envelopes that will be constructed as part of Phase Three as is more specifically described in Special Condition II-B-8 below, along approximately 4,800 linear feet of shoreline, as generally shown on Exhibit "A", shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes. If the permittee wishes to use the public access area for other than public access purposes, it must obtain prior written approval by or on behalf of the Commission.

Note that at the time Amendment Nos. Two and Three were issued, the Commission's Design Review Board reviewed and agreed with the relocation of several buildings authorized herein. These building relocations, shown in the August 7, 2006, Design Review Board packet, should not change the quantity or quality of public access provided at the site in any way, although trail configuration may be slightly altered from that shown in Exhibit A, particularly around the new location for the harbor in a master's office.

2. **Permanent Guarantee.** Prior to the installation of the boat slips, the permittee shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to the new, approximately 298,000-square-foot public access area (excluding the vehicle and boat trailer parking, as well as the guest berths). Prior to the commencement of any grading or construction activity for Phase Three of the project, the permittee shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to at least 10 percent of retail building envelopes as is more specifically described in Special Condition II-B-8 below.

The instruments shall create rights in favor of the public which shall commence no later than: (1) after completion of construction of any public access improvements required by this authorization and prior to docking any vessels within the marina basin authorized herein in the case of the 298,000-square-foot public access area; and (2) after completion of construction of any public access improvements required as part of the authorization of Phase Three and prior to the use of any structures authorized as part of Phase Three, in the public access area required in Special Condition II-B-8 below. Such instruments shall be in a form that meets

recordation requirements of San Mateo County and shall include a legal description of the property being restricted and a map that clearly shows the shoreline (Mean High Water Line or 5 feet above Mean Sea Level if marsh is present), the property being restricted for public access, the legal description of the property and of the area being restricted for public access, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, marina basin, any significant elevation changes, and the location of the nearest public street and adjacent public access areas. Approval or disapproval of the instruments shall occur within 30 days after submittal for approval and shall be based on the following:

- a. Sufficiency of the instruments to create legally enforceable rights and duties to provide the public access area required by this authorization;
 - b. Inclusion of an exhibit to the instrument that clearly shows the area to be reserved with a legally sufficient description of the boundaries of such area; and
 - c. Sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, licensees, and users.
3. **Recordation of the Instruments.** Within 30 days after approval of the instruments, the permittee shall record the instruments on all parcels affected by the instruments and shall provide evidence of recording to the Commission. No changes shall be made to the instruments after approval without the express written consent by or on behalf of the Commission.

4. **Improvements Within the Total Public Access Area**

Phase One 1B. Prior to the use of any structure authorized herein (including the marina berths) under Phase One 1B of the project, the permittee shall install the following improvements, as generally shown on attached Exhibit A:

- a. A 2,160-square-foot, two-lane, signed, public boat launch ramp;
- b. Fifteen, signed public parking spaces for vehicle and boat trailer parking;
- c. Twelve, signed public parking spaces at various locations around the marina basin, although the entire, approximately 600-space parking lot is open to public parking;
- d. Approximately 85,300 square feet of concrete, decomposed granite, wood, or asphalt (with header board) walkways (all designed to provide connections to adjacent properties), including a 12 to 15-foot-wide path along the majority of the marina basin perimeter and overlooks of Westpoint Slough and the adjacent habitat. The overlooks at the levee entrance to the marina shall include belvederes or other special features;
- e. Ten guest berths, identified with signage;
- f. One public restroom, provided within the Harbormaster's building and two public restrooms in the marina basin area;
- g. Approximately 170,500 square feet of landscaped areas;

- h. Site furnishings, as determined appropriate by the Commission staff as advised by the Design Review Board, including, but not limited to, lighting, seating (not less than 20 benches), tables, and trash receptacles (not less than 10 trash containers); and
- i. No fewer than fifteen public access and, when appropriate, Bay Trail signs, one at the beginning of each path on the site.

Phase Two. Prior to the use of any structure authorized herein under Phase Two of the project, the permittee shall install the following improvements, as generally shown on attached Exhibit A:

- a. Public observation areas or plazas that are an extension of or connected to the public pathway overlooking the launch ramp and boat haul-out areas that are at least 15 feet wide and total at least approximately 1,000 square feet;
- b. Site furnishings, as determined appropriate by the Commission staff as advised by the Design Review Board, including, but not limited to, lighting, seating (not less than 4 benches), tables, and trash receptacles (not less than 2 containers); and
- c. No fewer than two public access and, when appropriate, Bay Trail signs.

Phase Three. Prior to the use of any structure authorized herein under Phase Three of the project, the permittee shall install the following improvements, as generally shown on attached Exhibit A:

- a. An approximately 800-foot-long and 15-foot-wide public boardwalk adjacent to the retail areas;
- b. At least 10 percent of the building envelopes for the retail areas and appropriate public access amenities and site furnishings, as outlined in Special Condition II-B-8, below;
- c. Site furnishings, as determined appropriate by the Commission staff as advised by the Design Review Board, including, but not limited to, lighting, seating, tables, and trash receptacles (this may involve relocating some of the site furnishings required above);
- d. No fewer than two public access and, when appropriate, Bay Trail signs; and
- e. Approximately 43,000 square feet of landscaped "greens" and picnic areas.

Such improvements shall be consistent with the plans approved pursuant to Condition II-A of this authorization and substantially conform to the plans entitled Public Access Plan, Westpoint Marina and Boatyard, and Site Sections (three plans), Westpoint Marina and Boatyard, all dated June 27, 2003 and prepared by BMS Design Group and Bohley Consulting.

- 5. **Maintenance.** The areas and improvements within the total 298,000-square-foot area (plus any additional access area provided with development of the commercial buildings) shall be permanently maintained by and at the expense of, the permittee or its assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces; replacement of any trees or other plant materials that die or become unkempt; repairs or replacement as needed of any public access